

§216.172

of any live, in the water animal involved in a USE.

[74 FR 1484, Jan. 12, 2009, as amended at 76 FR 6701, Feb. 8, 2011]

§216.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.177, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §216.170(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (± 10 percent of the number of takes indicated below):

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—49470 (an average of 9894 annually).

(B) Minke whale (*Balaenoptera acutorostrata*)—320 (an average of 64 annually).

(C) Sei whale (*Balaenoptera borealis*)—230 (an average of 46 annually).

(D) Fin whale (*Balaenoptera physalus*)—230 (an average of 46 annually).

(E) Bryde's whale (*Balaenoptera edeni*)—320 (an average of 64 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—3905 (an average of 781 annually).

(B) Pygmy sperm whales (*Kogia breviceps*)—4325 (an average of 865 annually).

(C) Dwarf sperm whale (*Kogia sima*)—10610 (an average of 2122 annually).

(D) Cuvier's beaked whale (*Ziphius cavirostris*)—5750 (an average of 1150 annually).

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(E) Blainville's beaked whale (*Mesoplodon densirostris*)—1785 (an average of 357 annually).

(F) Longman's beaked whale (*Indopacetus pacificus*)—525 (an average of 105 annually).

(G) Rough-toothed dolphin (*Steno bredanensis*)—5385 (an average of 1077 annually).

(H) Bottlenose dolphin (*Tursiops truncatus*)—3670 (an average of 734 annually).

(I) Pan-tropical dolphins (*Stenella attenuata*)—10995 (an average of 2199 annually).

(J) Spinner dolphins (*Stenella longirostris*)—2105 (an average of 421 annually).

(K) Striped dolphins (*Stenella coeruleoalba*)—16045 (an average of 3209 annually).

(L) Risso's dolphin (*Grampus griseus*)—2485 (an average of 497 annually).

(M) Melon-headed whale (*Peponocephala electra*)—2985 (an average of 597 annually).

(N) Fraser's dolphin (*Lagenodelphis hosei*)—6235 (an average of 1247 annually).

(O) Pygmy killer whale (*Feresa attenuata*)—980 (an average of 196 annually).

(P) False killer whale (*Pseudorca crassidens*)—230 (an average of 46 annually).

(Q) Killer whale (*Orcinus orca*)—230 (an average of 46 annually).

(R) Short-finned pilot whale (*Globicephala macrorhynchus*)—8990 (an average of 1798 annually).

(iii) Pinnipeds: Hawaiian monk seal (*Monachus schauinslandi*)—550 (an average of 110 annually).

(2) Level A Harassment and/or mortality of no more than 10 individuals total of each of the species listed below over the course of the 5-year regulations: Bottlenose dolphin (*Tursiops truncatus*), Pygmy and Dwarf sperm whales (*Kogia breviceps* and *sima*), Melon-headed whale (*Peponocephala electra*), Pantropical spotted dolphin (*Stenella attenuata*), Pygmy killer whale (*Feresa attenuata*), Short-finned pilot whale (*Globicephala macrorhynchus*), Striped dolphin (*Stenella coeruleoalba*), and Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's

beaked whale, (*Mesoplodon densirostris*), Longman's beaked whale (*Indopacetus pacificus*).

§216.173 Prohibitions.

Notwithstanding takings contemplated in §216.172 and authorized by a Letter of Authorization issued under §§216.106 and 216.177, no person in connection with the activities described in §216.170 may:

(a) Take any marine mammal not specified in §216.172(c);

(b) Take any marine mammal specified in §216.172(c) other than by incidental take as specified in §216.172(c)(1) and (2);

(c) Take a marine mammal specified in §216.172(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.177.

§216.174 Mitigation.

(a) When conducting training activities identified in §216.170(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 of this chapter and 216.177 must be implemented. These mitigation measures include, but are not limited to:

(1) *Mitigation Measures for ASW training:* (i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968-D).

(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful

completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(vi) On the bridge of surface ships, there shall be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with mid-frequency active sonar, pedestal mounted "Big Eye" (20x110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(xii) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck.

(xiii) CPF shall distribute the final mitigation measures contained in the LOA and BO to the Fleet.

(xiv) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(xv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines)